

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on February 7, 2005. Claims 1-19 are pending in this application. In the Office Action, Claims 1 and 17-19 are rejected under 35 U.S.C. §112, second paragraph, Claims 1-4, 6-7 and 9-19 are rejected under 35 U.S.C. §112, first paragraph, Claims 1-5, 7-9, 11-16 and 19 are rejected under 35 U.S.C. §102 and Claims 6, 10 and 17 are rejected under 35 U.S.C. §103. In response Claim 1 has been amended. This amendment does not add new matter. In view of the amendments and/or for the response set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1 and 17-19 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended Claim 1 to include the word “of” before “at least two amino compounds.” Applicants respectfully submit that the “mixture” of Claim 1 clearly refers to the combination of at least two amino compounds (e.g. selected from the group consisting of amino acids and peptides) AND at least one reducing sugar. Further, the term “conducting a bioconversion” is a known technique and commonly understood by one skilled in the art and, as used by Applicants, concerns a biotransformation of the substrates with yeasts to generate the aroma precursors.

Regarding Claim 17, Applicants respectfully submit that “non fermented form” refers to dough not having yeast. For example, the specification states at page 7, lines, 8-10, that the present invention also concerns the use of the aromatizing composition obtained by the present bioconversion process in non fermented/non yeasted doughs in order to impart to such products a typical baked aroma. Regarding Claims 18-19, Applicants respectfully submit that there are different alternatives of preparing dough and bakery products such as proceeding with or without yeast. With yeast, the dough can be allowed to ferment so that the volume of the dough will increase during baking. Without yeast, the dough does not ferment, and therefore the final product has less volume. Accordingly, the metes and bounds of Claims 17-19 in view of the specification are clear to one having ordinary skill in the art.

Based on at least these noted reasons, Applicants believe that Claims 1 and 17-19 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1 and 17-19 under 35 U.S.C. §112, second paragraph, be withdrawn.

In the Office Action, Claims 1-4, 6-7 and 9-19 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Patent Office alleges that the specification does not provide enablement for a process using any amino acid and reducing sugar. Applicants respectfully disagree and note that compliance with the enablement requirement of 35 U.S.C. §112, first paragraph, does not turn on whether an example is disclosed. See MPEP 2164.02. An example may be "working" or "prophetic." A working example is based on work actually performed. A prophetic example describes an embodiment of the invention based on predicted results rather than work actually conducted or results actually achieved. *Id.* The specification need not contain an example if the invention is otherwise disclosed in such manner that one skilled in the art will be able to practice it without an undue amount of experimentation. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642, 645 (CCPA 1970). Though Applicants' specification discloses some preferred embodiments of amino acids and sugars, any other suitable amino acids and sugars could also be used. One having ordinary skill in the art would be able to determine them according to Applicants' specification through simple trial and error without an undue amount of experimentation.

Based on at least these noted reasons, Applicants believe that Claims 1-4, 6-7 and 9-19 fully comply with 35 U.S.C. §112, first paragraph. Accordingly, Applicants respectfully request that the rejection of Claims 1-4, 6-7 and 9-19 under 35 U.S.C. §112, first paragraph, be withdrawn.

In the Office Action, Claims 1-3, 7-9, 11-16 and 19 are rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,432,459 to Bel Rhlid et al. ("*Rhlid*"). Claims 1, 4-5, 7-8 and 14 are rejected under 35 U.S.C. §102(b) as anticipated by JP 74006108 ("*108*"). Applicants respectfully disagree with and traverse these rejections for at least the reasons set forth below.

Independent Claim 1 recites, in part, a process for the preparation of an aromatizing composition, which comprises conducting a bioconversion of a mixture of at least two amino compounds selected from the group consisting of amino acids and peptides and at least one reducing sugar in the presence of a yeast under conditions sufficient to form the aromatizing

composition. Contrary to Claim 1, neither *Rhlid* nor the '108 patent disclose or suggest conducting a bioconversion of a mixture of at least two amino compounds and at least one reducing sugar in the presence of a yeast.

Rhlid is directed to a process for the preparation of a flavoring composition containing 2-acetyl-2-thiazoline and precursors thereof, whereby a sulfur containing compound is reacted with an organic acid in the presence of yeast. See, *Rhlid*, column 1, lines 43-48. The present claims are directed, in part, to a different process. For example, in independent Claim 1, amino acids are combined with a reducing sugar in the presence of yeast to obtain the precursors. In addition, the sugar (D-glucose) in Example 1 of *Rhlid* is not used as an initial substrate for reacting because it is added after 4 and 24 hours of incubation. See, *Rhlid*, column 3, lines 41-44. As a result, this sugar is only added as a source of energy for the yeast to continue to function.

Regarding Example 5 of *Rhlid*, the Table therein shows that sugar is part of the recipe for making the bread. However, in this recipe, the flavoring composition of Example 1 and sugar are added separately. Consequently, the sugar of Example 5 is not a substrate which reacts with amino acids as required by Claim 1.

The '108 patent also fails to disclose or suggest conducting a bioconversion of a mixture of at least two amino compounds and at least one reducing sugar in the presence of a yeast as required by Claim 1. Instead, the '108 patent discloses a process for preparing flavor additives. Nevertheless, Applicants submit that the '108 patent does not disclose preparing aroma precursors, but rather aroma per se. For example, the '108 patent teaches making a fermentation of skim milk (a milk based product) and adding a heat treated mixture of saccharides and amino acids, which is the product of a Maillard reaction. As a result, the aroma products are already in other compositions and are not themselves precursors to baked goods as the claimed aromatization compounds are.

For the reasons discussed above, Applicants respectfully submit that Claim 1 and 2-5, 7-9, 11-16 and 19 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicants respectfully request that the rejections of Claims 1-5, 7-9, 11-16 and 19 under 35 U.S.C. §102 be withdrawn.

Claims 6, 10 and 17 are rejected under 35 U.S.C. §103 as being unpatentable over *Rhlid*. Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejection of Claims 6, 10 and 17. In this regard, the cited art fails to teach or suggest the elements of Claims 6, 10 and 17 in combination with the novel elements of Claim 1.

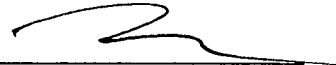
Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 6, 10 and 17 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY



Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: July 20, 2005